IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 374 OF 1999

Venkatesh Gattain Rapol,
Indian Inhabitant, adult, aged about
42 years, residing at 1103, Kalpna Nivas,
Chaudhari Compound, Kamathghan,
Bhiwandi 421 305, District-Thane .. Petitioner

v/s.

1. State of Maharashtra

2. Deputy Director of Education,
Nasik Region, Nasik.

3. The Administrative Officer,
School Board, Bhiwandi Municipal Council,
Bhiwandi. .. Respondents

Mr.N.V.Bandiwadekar for the petitioner.

Mr.P.M.Patil, Assistant Government Pleader for the respondent Nos.1 and 2.

Mr.R.M.Agarwal for the respondent No.3.

CORAM : R.M.LODHA &
NARESH H. PATIL, JJ.

DATED : 24TH JULY, 2006.

ORAL JUDGMENT (Per R.M.Lodha, J.)

The petitioner challenges the order dated 29th September, 1994, passed by the Administrative Officer, School Board, Bhiwandi Municipal Council, Bhiwandi whereby he was

reverted from the post of Headmaster to the post of Assistant Teacher.

2. The facts are brief. The petitioner was appointed by the Administrative Officer, School Board, Bhiwandi Municipal Council as an Assistant Teacher on 4th September, 1974. He was posted in Telgu Medium Primary School No.23. After putting in service of about 17 years, he was promoted to the post of Headmaster and posted in Primary School No.40. While he was working as Headmaster of Telgu School No.40, Bhiwandi, the petitioner is alleged to have indulged into irregularities. The show-cause notice was issued to the petitioner on 30th March, 1994, calling upon his explanation with regard to the irregularities concerning the grant of School Leaving Certificates as set out in the notice. A further show-cause notice dated 29th July, 1994 was sent informing him that his explanation to the show-cause notice dated 30th March, 1994 has not been found satisfactory and that he was not fit to work on the post of Headmaster and as to why he should not be reverted as Assistant Teacher. The Enquiry Committee was constituted. On 29th September, 1994, the order came to be issued reverting the petitioner from the post of Headmaster to the Assistant Teacher.

3. On 25th August, 1998, almost after four years of passing the impugned order, the petitioner approached this court in challenging the order dated 29.9.1994. Rule was issued on 19.6.2000.

4. In opposition to the writ petition, the respondent No.3 filed affidavit in reply twice, one on 16.4.2004 and the other on 19.3.2005. The petitioner filed rejoinder to the affidavits in reply.

5. It seems to us that the impugned order dated 29.9.1994 is appealable under section 24 of the Bombay Primary Education Act, 1947. Ordinarily, we would not have gone into the merits of the writ petition and relegated the petitioner to the alternative remedy provided under section 24 but in view of the fact that rule has already been issued; the writ petition has been pending before this Court for almost eight years and that this court on 15th February, 2006 directed the respondent No.2 to produce the original enquiry papers, we are persuaded to consider the matter on merits and not to dismiss the writ petition on the ground of alternative remedy.

6. On 15th February, 2006, the Bench passed the following order:-

> "1. In the grounds of the Writ Petition, it is alleged that punishment was imposed on the petitioner without giving him a reasonable opportunity to defend himself. It is specifically alleged that no charge sheet was issued and no charges were framed. Without framing any charges and without holding proper disciplinary inquiry punishment was imposed on the petitioner.
>
> 2. In view of these allegations, the respondent no.3 is directed to produce the original inquiry papers of the alleged inquiry held against the

petitioner. Stand over to 6th March, 2006."

7. That the reversal of the petitioner from the post of Headmaster to the Assistant Teacher is a major punishment admits of no ambiguity. Rule 63 of the Bombay Primary Education Rules, 1949 provides that no order or reduction, removal, retirement or dismissal shall be passed unless an enquiry has been made into the conduct of such member by the Administrative officer or by a person authorised by him in this behalf in accordance with the procedure laid down in the Bombay Civil Services Conduct, Discipline and Appeal Rules. The Bombay Civil Services Conduct, Discipline and Appeal Rules came to be superseded by the Maharashtra Civil Services (Discipline and Appeal) Rules with effect from 12th July, 1979. In our view, therefore, it can be safely held that for imposing major penalty against the petitioner, the procedure provided under Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 was required to be followed.

8. Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 provides for the procedure for imposing major penalties and it reads thus-

> "8. Procedure for imposing major penalties.- (1) No order imposing any of the major penalties shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 9, or where such inquiry is held under the Public Servants (Inquiries) Act, 1850 (37 of 1850) in the manner provided in that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Explanation.- Where a disciplinary authority itself holds an inquiry under this rule, any reference to an inquiring authority in this rule shall, unless the context otherwise requires, be construed as reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule, the disciplinary authority shall draw up or cause to be drawn up-

(a) the substance of the imputations of misconduct or misbehaviour into definite and distinct parties of charge;

(b) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant; and

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant, a copy of articles of charges, the statement of the

imputations of misconduct or misbehaviour, and a list of documents and of the witnesses by which each article of charge is proposed to be sustained, and shall by a written notice require the Government servant to submit to it within such time as may be specified in the notice, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary as to do, appoint, under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 9 of these rules;

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint under sub-rule (2) of these rules an inquiring authority for the purpose;

(c) Where the disciplinary authority appoints an inquiring authority it may, by an order, appoint a Government servant or a legal practitioner, to be known as the “Presenting Officer” to present the case in support of the articles of charge before the inquiring authority.

(6) The disciplinary authority shall where it is not the inquiring authority, forward to the inquiring authority-

(i) a copy of each of the articles of charge

and the statement of the imputations of misconduct or misbehaviour;

(ii) A copy of the written statement of defence, if any, submitted by the Government servants;

(iii) copies of statements of witnesses, if any, referred to in sub-rule (3) of this rule;

(iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and

(v) a copy of the order appointing the Presenting Officer.

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf, or within such further time not exceeding ten days, as the inquiring authority may allow.

(8) The Government servant may take the assistance of any other Government servant [for retired Government servant] to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or , the disciplinary authority, having regard to the circumstances of the case, so permits.

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence, or has not submitted any

written statement of defence appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain signature of the Government servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government servant pleads guilty.

(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove articles of charge and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence.-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3) of this rule,

(ii) submit a list of witnesses to be examined on his behalf,

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3) of this rule, indicating the relevance of such documents.

(12) Where the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3) of this rule, the inquiring authority shall furnish him with such copies as early as possible, and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(13) Where the inquiring authority receives a notice from the Government servant for the discovery or production of documents, the inquiring authority shall forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents by such date as may be specified in such requisition to the case.

Provided that, the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(14) On receipt of the requisition referred to in sub-rule (13), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that, if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority and the inquiring authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production of discovery of such documents.

(15) The inquiry shall be commenced on the date fixed in that behalf by the inquiring authority and shall be continued thereafter on such date or dates as may be fixed from time to time by that authority.

(16) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of, the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine, the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(17) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the

interests of justice:

Provided that no new evidence shall be permitted or called for or any witness shall be recalled to fill up any gap in the evidence unless there is an inherent lacuna or defect in the evidence which has been produced originally.

(18) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer appointed, if any.

(19) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(20) The inquiring authority may, after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

(21) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, appointed, if any, and the Government servant, or permit them to file written briefs of their respective case, if they so desire.

(22) If the Government servant to whom a copy of the articles of charges has been delivered, does not submit a written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte.

(23) (a) Where a disciplinary authority competent to impose any of the minor penalties but not competent to impose any of the major penalties has itself inquired into or caused to be inquired into any of the articles of charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it is of the opinion that any of the major penalties should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose such major penalty.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness, and may impose on the Government servant such penalty as it may be deem fit in accordance with these rules:

Provided that if any witnesses are recalled, they may be cross-examined by or on behalf of the Government servant.

(24) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another

inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by it predecessor and partly recorded by itself:

Provided that, if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as herein-before provided:

Provided that, if any witnesses are recalled, they may be cross-examined by or on behalf of the Government servant.

(25) After the conclusion of the inquiry, a report shall be prepared by the inquiring authority. Such report shall contain-

(a) the articles of the charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the Government servant in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefor;

[* * *]

(26) Where, in the opinion of the inquiring authority, the proceedings of the inquiry establish any article of charge different from the original

articles of the charge, it may record its finding on such article of charge:

Provided that, the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(27) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include-

(a) the report prepared by it under sub-rule (25);

(b) the written statement of defence, if any, submitted by the Government servant;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

9. Rule 9 provides for action on the enquiry report. It reads thus-

“9. Action on the inquiry report.- (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 8 of these rules as far as may be.

(2) The disciplinary authority shall if it is not the inquiring authority, consider the record of the inquiry and record its findings on each charge. If it disagrees with the findings of the inquiring authority on any article of charge, it shall record its reasons for such disagreement.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the minor penalties should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 10 of these rules on the basis of the evidence adduced during the inquiry held under Rule 8 determine what penalty, if any, should be imposed on the Government servant and make an order imposing such penalty:

Provided that, in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice, and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in Clauses (v) to (ix) of sub-rule

(1) of Rule 5, should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed;

Provided that, in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice, and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant.

10. The aforesaid procedure was not followed by the Board is apparent from the fact that on 30th March, 1994, the following show-cause notice was given to the petitioner:-

"Municipal School Board, Bhiwandi-Nizampur Dist.Thane.

O.W.No.MSB-2003

Date : 30.3.1994

To,

Shri V.G.Rapol,
Headmaster School No.23,
Bhiwandi.

Sub: Show Cause Notice

Ref:

Sir,

The Headmaster of concerned School

has informed this office that while you were working as Headmaster at Telgu School No.40 Bhiwandi you had committed irregularities. Hence information in respect of following points be submitted to this office till 12.30 p.m. On 7.4.1994 personally, otherwise you will be held responsible and further office action will be taken which may be noted.

(1) School Leaving Certificate are given even though the students are not admitted to Std.3 & 4.

(2) Standard 3rd Students 8, given S.L.C. To 3 students. Standard 4th students 20, given SLC to 5 (total 8).

(3) No entry in Daily School Diary.

(4) While issuing SLC no entry is made in Outward Book.

(5) Signatures of parents are not taken on some SLCs.

(6) Such 8 SLCs are given on 12.2.1994.

(7) The students admitted in Standard 1st on 30.6.1993 are given SLC on 12.2.1994 -Total 6.

(8) The Students affidavit is taken in the name of Headmaster and there is no signature or stamp of Executive Magistrate.

(9) Applications are not taken from parents while issuing SLC.

(10) Certificate is given in the proforma for admission to school.

Sd/-
Administrative Officer
Municipal School Board, Bhiwandi
Nizampur, Bhiwandi."

11. In response to the show-cause notice dated 30th March, 1994, the petitioner sent his reply on 2.4.1994. Nothing happened for more than three months. Then on 21.7.1999, the petitioner was communicated that his explanation was not found satisfactory and that he should explain his position within one week as to why his one increment should not be stopped permanently. The notice dated 21.7.1999 reads thus-

"Municipal School Board, Bhiwandi Nizampur, Dist.Thane.

O.W.No.MSB/446

Date: 21.7.1999

To,

Shri V.G. Rapol,
H.M. School No.23,
Bhiwandi.

Sub: Misconduct by H.M. Of Telgu School
N.G.O.

Ref: (1) This office letter No.2003 dated 30.3.1994 show cause notice

(2) Explanation by H.M. School No.23 dated 2.4.1994.

Sir,

The explanation submitted by with reference to above subject by aforesaid letter, is not found to be satisfactory. It is also misleading which is as follows:

Point No.1 to 3 :- You have informed that you have admitted the Wards/Students coming from Andhra Pradesh on the basis of SLC submitted by parents. After the admission of these students, it was necessary that their names should be included in the School attendance register. It was the prime duty of the HM to see whether the names of those students are brought on attendance register or not. It is proved that your reply in this behalf is avoiding.

Point No.4 :- While issuing SLC it is necessary to make entry in outward Register. But while issuing SLC you have not make such entries, and not obtained signatures of parents on SLC.

Point No.7 :- On 30.6.1993 even though (admission) is given in Standard 1st, the SLC has been issued on 12.2.1994. In this respect, primary education is compulsory as per Bombay Primary Education Rules, 1949 and Act, 1947. It is not proper to issue SLC to students or parents but it is seen that you have breached the rules.

Therefore considering all the aforesaid facts, you should submit your explanation within one week why your one increment should not be stopped permanently.

Sd/-
Administrative Officer,
Mun.School Board,
Bhiwandi-Nizampur,
Bhiwandi."

12. Thereafter, on 29.7.1994, another notice was sent to the

petitioner asking him as to why he should not be reverted to the post of Assistant Teacher as his explanation was not found satisfactory. The notice dated 29.7.1994 reads thus-

> "Municipal School Board, Bhiwandi Nizampur, Dist. Thane.
>
> O.W.No.MSB/487
>
> Date: 29.7.95
>
> To,
>
> Shri V.G.Rapol,
> H.M.School No.23,
> Bhiwandi.
>
> Sub: Read (1) MSB letter No.1215 dated 7.12.1993
>
> (2) MSB letter No.2003 dated 30.3.2004
>
> (3) MSB letter No.446 dated 21.7.1994
>
> (4) Letter No.15 dated 29.7.1994 from H.M.School No.35.
>
> NOTICE
>
> As per the complaint application received against you, the Show Cause notice vide aforesaid letter was given to you calling for explanation. However, Several explanations were not satisfactory. But still final opportunity was given to you for improvement.
>
> By letter at ref. No.4 from Headmaster of

School No.35 Telgu Medium, Prabhu Ali, Bhiwandi it is held that you are not fit to work in the post of Headmaster and therefore you should submit your explanation in writing to this office in 7 days why you should not be reverted as Assistant Teacher as per Bombay Primary Education Rules, 1949/Act 1947/Enquiry Rules, 1979.

Sd/-
Administrative Officer,
M.S.E.Bhiwandi"

13. No chargesheet was served upon the petitioner nor the petitioner was served with statement of allegations. But an Enquiry Committee was constituted and the petitioner was called upon to appear before the Enquiry Committee on 17.8.1994. The notice dated 12.8.1994 reads thus-

"Municipal School Board, Bhiwandi Nzampur, Dist.Thane

O.W.No.MSB/556

Date : 12.8.1994

To,

1. B.M. Mali, Member

2. Abusad Salan, Member

3. S.L. Zambare, Asstt. Teacher
School No.1, through H.M.

4. M.B.Dota H.M. School No.59

Sub: to remain present for the meeting of

Enquiry Committee at 11.30 a.m. On 17.8.1994.

Sir,

Shri Ravindra M. Bhat Asstt. Teacher School No.45 Shri V.G.Rapol H.M. School No.23.

In respect of enquiry into their offence (misconduct) the meeting of Enquiry committee is convened on 17.8.1994 at 11.30 a.m. In the office of School Board. Hence you should remain present on time.

Copy: (1) Shri Bhat
(2) Shri Rapol

Sd/-
Administrative officer
M.S.B. Bhiwandi,
Nizamopur."

14. In response to the notice dated 12.8.1994, the petitioner sent the following reply:-

"O.W.No.23

Date: 16.8.1994

The Administrative Officer,
Municipal School Board,
Bhiwandi, Dist.Thane.

Ref:Office Letter No.556 dated 12.08.1994

Sub:Appointment of Representative.
.....

Sir,

I have been asked to bring my representative for the enquiry into the charges against me on 17.08.1994.

However, it is not clear as to who should be the representative, whether he should from amongst the teachers or an outsider and therefore I cannot bring my representative on 17.08.1994.

Hence I may be given the information regarding appointment of representative.

It is also necessary to clarify that if the said proceedings are to be conducted like court proceedings whether I can bring (engage) an Advocate?

Hence the same (explanation/ clarification) be given to me, please.

Yours faithfully,

Sd/-
H.M.No.23, Kaneri,
Bhiwandi."

15. Then all of a sudden, the impugned order dated 29.9.1994 came to be issued which reads thus-

"Municipal School Board, Bhiwandi

O.W.No.Reversion/94-95/728

Date : 29.09.1994.

Read:

(1) M.S.B. Letter No.1215 dated 17.12.03

(2) M.S.B. Letter No.2603 dated 30.3.94

(3) M.S.B. Letter No. 446 dated 21.7.94

(4) M.S.B. Letter No. 35 dated 29.7.94

(5) M.S.B. Letter No. 487 dated 29.7.94

(6) M.S.B. Resolution No. 178 dated 30.7.94

(7) M.S.B.Letter No.555 dated 12.8.94

(8) M.S.B. Letter No. 578 dated 29.8.94

(9) M.S.B. Letter No. 657 dated 7.9.94

(10) Report by Committee dated 12.09.94

O R D E R

Shri Vyankatesh Gattiah Rapol School No.23.

Considering the opinion (report) of the Enquiry Committee as per Bombay Primary Education Rules 1949 and Mah.Civil Services (Conduct) Rules, 1979 it is seen that you are full guilty. Therefore you have committed breach of Rule 70(2) of the Bombay Primary Education Rules 1949 and since you have fully misused the post of Headmaster, the post of Headmaster is withdrawn from you and you are reverted to the post of Primary Teacher w.e.f. 01.10.1994. Similarly, you will not be given promotion at any time in future. After reversion, the pay is fixed as per M.C.R.81 and that entry is made in the service book.

Therefore, on receipt of this order, you should hand over the charge of School No.23 to the first Asstt. Teacher and join the post of Asstt. Teacher at School No.35 and submit that report to this office.

Sd/-
Administrative Officer,

M.S.B.Bhiwandi."

16. It would be, thus, seen that though the order of major penalty has been passed against the petitioner by reverting him from the post of Headmaster to the Assistant Teacher but the procedure mandated by Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 was not at all followed. The notices which were given to the petitioner cannot be a substitute of the chargesheet or the statement of allegations contemplated under Rule 8. Even the Enquiry Committee was constituted without framing the charges. The Enquiry Committee did not conduct the enquiry as contemplated by Rule 8. It was for this reason that the Bench on 15th February, 2006, called upon the respondent No.3 to produce the original enquiry papers of the enquiry said to have been held against the petitioner but since no enquiry was held, the papers were not shown to us.

17. The impugned order dated 29.9.2004 is an order in wholesale breach of the procedure for imposing major penalties and suffers from gross illegality and irregularities. We hold so. The question now is what relief may be granted to the petitioner. The affidavits in reply filed by the respondent No.3 suggest that petitioner has been indulging into manipulating and fabricating the school record. He had issued false leaving certificates while he was working as Headmaster. He is alleged to have indulged into serious malpractices unbecoming of Headmaster. The petitioner did not challenge the order of reversal by filing the statutory

appeal. Not only that, he even did not approach the Court expeditiously. The writ petition has been filed almost after four years of the impugned order. All along he has been working as Assistant Teacher. For all these reasons, the petitioner cannot be given the financial benefits, though the order dated 29.9.1994 has been held to be bad in law. However, he has to be reinstated as the Headmaster of the primary school by the respondent No.3.

19. We, accordingly, pass the following order:-

(i) The order dated 29th September, 1994 is quashed and set aside.

(ii) The respondent No.3 is directed to restore the position of Headmaster to the petitioner as early as possible and in no case later than four weeks from today.

(iii) The petitioner shall not be entitled to any financial benefits as a result of quashing the order dated 29th September, 1994.

(iv) The respondent No.3 shall be at liberty to institute disciplinary enquiry against the petitioner for the alleged misconduct in accord with the Maharashtra Civil Services (Discipline and Appal) Rules, 1979.

No costs.

(R.M.LODHA, J.)

(NARESH H. PATIL, J.)